

§ 4.225

examination under § 4.221 or on the failure of a party to respond to interrogatories or requests for admissions under § 4.222; or on the failure of a party to comply with an order of the administrative law judge issued under § 4.223 without, in any of such events, showing an excuse or explanation satisfactory to the administrative law judge for such failure, the administrative law judge may:

(a) Decide the fact or issue relating to the material requested to be produced, or the subject matter of the probable testimony, in accordance with the claims of the other party in interest or in accordance with other evidence available to the administrative law judge; or

(b) Make such other ruling as he determines just and proper.

§ 4.225 Prehearing conference.

The administrative law judge may, upon his own motion or upon the request of any party in interest, call upon the parties to appear for a conference to:

(a) Simplify or clarify the issues;

(b) Obtain stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(c) Limit the number of expert or other witnesses in avoidance of excessively cumulative evidence;

(d) Effect possible agreement disposing of all or any of the issues in dispute; and

(e) Resolve such other matters as may simplify and shorten the hearing.

HEARINGS

§ 4.230 Administrative law judge; authority and duties.

The authority of the administrative law judge in all hearings in estate proceedings includes, but is not limited to authority:

(a) To administer oaths and affirmations;

(b) To issue subpoenas under the provisions of 25 U.S.C. 374 upon his own initiative or within his discretion upon the request of any party in interest, to any person whose testimony he believes to be material to a hearing.

43 CFR Subtitle A (10-1-00 Edition)

Upon the failure or refusal of any person upon whom a subpoena shall have been served to appear at a hearing or to testify, the administrative law judge may file a petition in the appropriate U.S. District Court for the issuance of an order requiring the appearance and testimony of the witness:

(c) To permit any party in interest to cross-examine any witness;

(d) To appoint a guardian ad litem to represent any minor or incompetent party in interest at hearings;

(e) To rule upon offers of proof and receive evidence;

(f) To take and cause depositions to be taken and to determine their scope; and

(g) To otherwise regulate the course of the hearing and the conduct of witnesses, parties in interest, and attorneys at law appearing therein.

[36 FR 7186, Apr. 15, 1971, as amended at 55 FR 43133, Oct. 26, 1990]

§ 4.231 Hearings.

(a) All testimony in Indian probate hearings shall be under oath and shall be taken in public except in those circumstances which in the opinion of the administrative law judge justify all but parties in interest to be excluded from the hearing.

(b) The proceedings of hearings shall be recorded verbatim.

(c) The record shall include a showing of the names of all parties in interest and of attorneys who attended such hearing.

[36 FR 7186, Apr. 15, 1971, as amended at 52 FR 26345, July 14, 1987]

§ 4.232 Evidence; form and admissibility.

(a) Parties in interest may offer at a hearing such relevant evidence as they deem appropriate under the generally accepted rules of evidence of the State in which the evidence is taken, subject to the administrative law judge's supervision as to the extent and manner of presentation of such evidence.

(b) The administrative law judge may admit letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, the weight to be attached to evidence presented in any